

ARKANSAS SUPREME COURT

No. 07-73

NOT DESIGNATED FOR PUBLICATION

JEFFERY TALLEY
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered February 8, 2007

PRO SE MOTION FOR BELATED
APPEAL AND PETITION FOR WRIT
OF CERTIORARI [CIRCUIT COURT
OF LINCOLN COUNTY, LCV 2006-77,
HON. ROBERT H. WYATT, JR.,
JUDGE]

MOTION TREATED AS MOTION FOR
RULE ON CLERK AND DENIED;
PETITION FOR WRIT OF
CERTIORARI MOOT.

PER CURIAM

In 2006, petitioner Jeffery Talley, who is incarcerated in the Arkansas Department of Correction by virtue of several criminal convictions, filed in the circuit court in the county where he was incarcerated a *pro se* petition for writ of *habeas corpus*. The petition was denied on September 11, 2006. Petitioner timely filed a notice of appeal from the order on October 5, 2006, but he did not tender the record to this court within ninety days of the date of the notice of appeal as required by Ark. R. App.-Civil 5(a). On January 22, 2007, petitioner submitted a partial certified record of the lower court proceedings and filed the instant motion seeking leave to lodge the record belatedly and proceed with an appeal of the September 11, 2006, order. As the notice of appeal was timely filed, we treat the motion as a motion for rule on clerk. *See Johnson v. State*, 342 Ark. 709, 30 S.W.3d 715 (2000) (*per curiam*); *see also Muhammed v. State*, 330 Ark. 759, 957 S.W.2d 692 (1997) (*per curiam*). Petitioner also filed with the motion a petition for writ of certiorari to bring

up the remainder of the record.

A petitioner has the right to appeal a ruling on a petition for postconviction relief. *Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (*per curiam*). With that right, however, goes the responsibility to file a timely notice of appeal and tender the record here within the time limits set by the rules of procedure. If a petitioner fails to tender the record in a timely fashion, the burden is on the petitioner to make a showing of good cause for the failure to comply with proper procedure. *See Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (*per curiam*). The fact that a petitioner is proceeding *pro se* does not constitute good cause for the failure to conform to the prevailing rules of procedure. *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (*per curiam*); *Thompson v. State*, 280 Ark. 163, 655 S.W.2d 424 (1983) (*per curiam*); *see also Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (*per curiam*).

Petitioner here asserts that he should be permitted to lodge the record belatedly because he could not afford the fee for the record and the lower court denied his motions to proceed *in forma pauperis*. The partial record tendered by petitioner with the instant motion does not contain an order denying a request to proceed as an indigent on appeal, but, if such an order was in fact entered, petitioner was entitled to challenge the order by appeal. The filing of the instant motion in this court is not a substitute for an appeal from the order that denied petitioner indigent status.

The purpose of the rule setting time limitations on lodging a record is to eliminate unnecessary delay in the docketing of appeals. We have made it abundantly clear that we expect compliance with the rule so that appeals will proceed as expeditiously as possible. *Jacobs v. State*, 321 Ark. 561, 906 S.W.2d 670 (1995) (*per curiam*) (citing *Alexander v. Beaumont*, 275 Ark. 357, 629 S.W.2d 300 (1982) (*per curiam*)). As it was the duty of the petitioner to tender the record to this

court in a timely manner, and he has not established good cause for his failure to do so, the motion to proceed with the appeal is denied.

Motion for belated appeal treated as motion for rule on clerk and denied; petition for writ of certiorari moot.